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10/632,862

08/04/2003

Masanori Fujimoto

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WHITHAM, CURTIS & CHRISTOFFERSON & COOK, P.C.

11491 SUNSET HILLS ROAD

SUITE 340

RESTON, VA 20190

EXAMINER

HAIDER, FAWAAD

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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/632,862

Filing Date: August 4, 2003

Appellant(s): FUJIMOTO, MASANORI.

Michael Whitham

For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 3/16/09 appealing from the Office action mailed 9/11/08.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments **after final** rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2001/0020198	Wilson	12-2000
JP 10-324398	Kazumi et al	5-1997

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 5, 6, and 9 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Wilson (2001/0020198) in view of Kazumi (JP 10-324398).

Re Claim 1: Wilson discloses a display associated with said POS terminal wherein said display presenting a plurality of fixed amount selections for fuel by

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the customer (See Abstract and [0003, 0010, 0074, 0121, 0192]). Wilson discloses selecting, with the POS terminal, a fixed amount for items and option items to be purchased, each option item being associated with an option item amount (see [0003, 0053-0057, 0192], Figure 1, Figure 5). Wilson discloses a display associated with said POS terminal said display presenting one or more option items which can be bought (See [0003, 0053-0057, 0086, 0192]). Wilson discloses wherein said display only displays said option items which can be bought for less than said fixed amount (See [0003, 0053-0057, 0086, 0121, 0192]). Finally, Wilson also discloses said POS terminal permitting fueling at said gasoline stand in an amount equal to said balance amount (See [0085]).

However, Wilson fails to disclose a difference. Kazumi discloses a difference between said one fixed amount selection and any option item amounts for option items to be purchased (See Abstract). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Wilson's invention with Kazumi's disclosure of deducting from a fixed amount in order to "deal efficiently without degrading customer service when a purchasing amount of liquid to be sold at a predetermined quantity unit is specified in an amount of money (See Abstract)."

Re Claims 5 and 9: Wilson discloses wherein the POS terminal issues an option item ticket for said option items purchased and a sales receipt (See [0066]).

Re Claim 6: Wilson discloses wherein said option item ticket includes a bar code (See [0067, 0094]).

(10) Response to Argument

The Appellant's first argument is that the combination of references show the ability to use money (not a credit card or other transaction storing device) to obtain both gas and optional items, with no money back. The appellant also argues that the Wilson and Kazumi describe systems which require a transponder or memory device, and there is no such requirement in this invention. The Examiner believes that it is improper to import claim limitations from the specification, none of these arguments are written specifically in the claim language. "Though understanding the claim language may be aided by explanations contained in the written description, it is important not to import into claim limitations that are not part of the claim. For example, a particular embodiment appearing in the written description may not be read into a claim when the claim language is broader than the embodiment." *Superguide Corp. v. DirecTV Enterprises, Inc.* 358 F.3d 870, 875, 69 USPQ2d 1865, 1868 (Fed. Cir. 2004). See also *Liebel-Flarsheim Co. v. Medrad Inc.*, 358 F.3d 898, 906, 69 USPQ2d 1801, 1897 (Fed. Cir. 2004).

Regardless, Wilson's invention is a fuel dispensing system for cash customers. In the Abstract, cash transactions are mentioned multiple times. In [0053-0057], Wilson discloses the ability to obtain both gas and optional items. Regarding no cash back and a fixed amount of money, Kazumi discloses in its abstract: "purchasing amount of liquid to be sold at a predetermined quantity unit is specified in an amount of money... In case of refueling in a fixed amount of money, the maximum quantity able to be refuelled within a salable amount of

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money range adding the saved amount of money of this customer to an amount of money specified by the customer is calculated to refuel in a quantity calculated."

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Fawaad Haider/

Examiner, Art Unit 3627

Conferees:

/F. Ryan Zeender/

Supervisory Patent Examiner, Art Unit 3627

Vincent Millin /vm/

Appeal Conference Specialist